

J. WARD O'NEILL
 BERNARD D. ATWOOD
 JAMES M. ESTABROOK
 EDWARD H. MAHLA
 JOHN C. MOORE
 MACDONALD DEMING
 WILLIAM J. JUNKERMAN
 GORDON W. PAULSEN
 M. E. DEORCHIS
 WILLIAM P. KAIN, JR.
 DAVID P. H. WATSON
 RICHARD G. ASHWORTH
 EDWARD L. JOHNSON
 RICHARD B. BARNETT
 MAURICE L. NOYER
 SANFORD C. MILLER
 FRANCIS X. BYRN
 THOMAS R. H. HOWARTH
 STEPHEN K. CARR
 WALTER E. RUTHERFORD
 R. GLENN BAUER
 THEODORE M. SYSOL
 CARROLL E. DUBUC
 THOMAS F. MOLANPHY
 LENNARD K. RAMBUSCH
 JAMES J. SENTNER, JR.
 RANDAL R. CRAFT, JR.
 WILLIAM J. HONAN III
 CHESTER D. HOOPER
 EMIL A. KRATOVIL, JR.
 JOHN J. REILLY
 BARTON T. JONES
 RICHARD D. BELFORD

HAIGHT, GARDNER, POOR & HAVENS
 ONE STATE STREET PLAZA
 NEW YORK, N.Y. 10004

TELEPHONE (212) 344-6800

CABLE: MOTOR NEW YORK
 RCA TELEX: 222974
 WUI TELEX: 620362
 ITT TELEX: 424674
 WU TELEX: 127683

WASHINGTON OFFICE
 FEDERAL BAR BUILDING
 1819 H STREET, N.W.
 WASHINGTON, D.C. 20006
 TELEPHONE (202) 737-7847
 CABLE: MOTOR WASHINGTON
 WASHINGTON WU TELEX 892598

CARROLL E. DUBUC
 RESIDENT PARTNER, WASHINGTON

RALPH E. CASEY
 JOHN W. MCCONNELL, JR.
 OF COUNSEL, WASHINGTON

June 5, 1979

10461
 RECORDATION NO. Filed 1425

JUN 7 1979 - 3 25 PM

No. 9-1534331
 Date JUN 7 1979
 Fee \$50.00
 ICC Washington, D.C.

Secretary
 Interstate Commerce Division
 Washington, D.C. 20423

Dear Sir:

* We are special counsel for General Electric Credit Corporation ("GECC") and we enclose for filing with and recording by the Interstate Commerce Commission four counterparts of a Lease of Railroad Equipment dated as of May 1, 1979 between ITEL Corporation (the "Lessee"), acting through its Rail Division, Two Embarcadero Center, San Francisco, California 94111 and The Connecticut Bank and Trust Company, a Connecticut banking corporation, acting not in its individual capacity but solely as Trustee (the "Lessor") under a Trust Agreement dated as of May 1, 1979 with GECC; the Lessor's address is One Constitution Plaza, Hartford, Connecticut, 06115. The Lease covers the equipment described in Schedule A hereto. The words "SUBJECT TO AN AGREEMENT FILED WITH THE INTERSTATE COMMISSION" will be printed on the side of each unit. Identifying marks for certain of the units and equipment are to be determined and filed with the Interstate Commerce Commission at a later date in connection with the filing of Lease Supplements to be executed and delivered by the Lessee and the Lessor in connection with delivery and settlement for each unit of equipment.

* Our check in the amount of \$50.00 is enclosed to cover filing fees.

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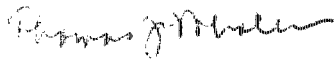
Secretary, Interstate Commerce Commission

Please return all additional copies of the enclosed counterparts not required for filing by the Interstate Commerce Commission to Allen Harrison of Wilmer, Cutler and Pickering who will be delivering this letter on our behalf.

Very truly yours,

HAIGHT, GARDNER, POOR & HAVENS

By


Thomas J. Whalen

TJW:ra

Enclosures

10461

RECORDATION NO. Filed 1425

JUN 7 1979 - 3 25 PM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of May 1, 1979

between

**ITEL CORPORATION,
acting through its Rail Division,
as Lessee**

and

**THE CONNECTICUT BANK AND TRUST COMPANY,
as Trustee**

LEASE OF RAILROAD EQUIPMENT

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LEASE OF RAILROAD EQUIPMENT dated as of May 1, 1979, between ITEL CORPORATION, a Delaware corporation (hereinafter called the "Lessee"), acting through its Rail Division, and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, acting not in its individual capacity but solely as Trustee (hereinafter called the "Trustee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with General Electric Credit Corporation (hereinafter called the "Owner").

RECITALS:

The Trustee, the Owner and the Lessee are parties to an Agreement to Acquire and Lease dated as of May 1, 1979 (hereinafter called the "Agreement to Acquire and Lease") which provides, among other things, the conditions under which the Trustee will acquire certain of the railroad equipment described in Schedule A hereto (hereinafter called the "Equipment") and lease the Equipment to the Lessee hereunder.

The Lessee has entered into Purchase Order Assignments (hereinafter called the "Purchase Order Assignments") with the Trustee assigning to the Trustee its rights to purchase and take delivery of the Equipment from each of the Builders listed in Schedule A hereto (individually a "Builder" and collectively the "Builders") pursuant to purchase orders with the Builders (hereinafter called the "Purchase Orders").

The Lessee agrees to lease from the Trustee all the units of the Equipment (or such lesser number of units as are delivered and accepted and settled for under the Purchase Orders and the Agreement to Acquire and Lease) at the rentals and for the term and upon the conditions hereinafter provided (each such unit so leased being hereinafter called a "Unit").

In connection with the delivery and acceptance of Units hereunder the Lessee and the Trustee will execute and deliver supplements to this Lease, each substantially in the form attached as Exhibit I hereto (hereinafter called a "Lease Supplement").

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Trustee hereby agrees to lease the Units to the Lessee upon the following terms and conditions:

§1. *Net Lease.* This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Lessee shall not be entitled to any abatement of rent or any other amounts due hereunder, reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Trustee or the Owner, whether under this Lease, under any Lease Supplement, under the Purchase Order Assignments, under any Sublease Assignment (as hereinafter defined), under the Agreement to Acquire and Lease or otherwise, including the Lessee's rights by subrogation hereunder or thereunder against the Trustee, the Owner or any Builder or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the obligations of the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance

with the express terms hereof. Each rental or other payment made by the Lessee in accordance with the terms of this Lease shall be final and the Lessee shall not seek to recover all or any part of such payment from the Trustee or the Owner for any reason whatsoever.

§2. *Delivery and Acceptance of Units; Designation of Units.* The Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Purchase Order Assignments; *provided, however,* that such acceptance shall be in accordance with the provisions of Sections 4 and 5 of the Agreement to Acquire and Lease. Each delivery of a Unit to the Trustee under the related Purchase Order Assignment shall be made at the related Builder's plant and shall be deemed to be a delivery hereunder to the Lessee. Upon completion and delivery of a Unit as aforesaid, the Lessee will cause an employee or agent of the Lessee to inspect the same, and, if such Unit is found to conform to the specifications set forth in the related Purchase Order, the requirements and standards applicable thereto and if such Unit is found to be acceptable, to execute and deliver to the Trustee a certificate of approval and acceptance, stating (i) that such Unit has been inspected and approved on behalf of the Lessee and the Trustee on the date of such certificate, and (ii) that such Unit has been inspected and accepted on behalf of the Lessee under this Lease and the Trustee under the related Purchase Order Assignment on the date of such certificate and is marked in accordance with §5 hereof (such certificate is hereinafter called the "Certificate of Acceptance and Approval"). Upon issuance of such Certificate of Acceptance and Approval, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and irrevocably accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The inspection and approval and the delivery, inspection and acceptance hereunder of any Unit of Equipment excluded from the respective Purchase Order Assignment pursuant to Section 6 of the Agreement to Acquire and Lease shall be null and void and ineffective to subject such Unit to this Lease. The Lessee hereby represents and warrants to the Trustee that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Lessee or its agent as agent for the Trustee hereunder.

On or before each Closing Date (as defined in the Agreement to Acquire and Lease) the Lessee and the Trustee will enter into a Lease Supplement which shall set forth the Purchase Price of each Unit of Equipment to be settled for on such Date, the Payment Dates (as hereinafter defined), and the termination date of this Lease with respect to such Unit.

§3. *Rentals.* The Units will be delivered on Delivery Dates (as defined in the Agreement to Acquire and Lease) occurring during the periods identified in the schedule below. With respect to each Unit so delivered, the Lessee shall pay to the Trustee as basic rent 30 consecutive semi-annual payments on the first Payment Date (as defined below) occurring after the related Closing Date and on each applicable Payment Date thereafter as provided in the schedule below.

<u>Delivery Date Periods</u>	<u>Payment Dates</u>
June 1, 1979 through June 25, 1979	January 1 and July 1
June 26, 1979 through July 25, 1979	February 1 and August 1
July 26, 1979 through August 25, 1979	March 1 and September 1
August 26, 1979 through September 25, 1979	April 1 and October 1
September 26, 1979 through October 25, 1979	May 1 and November 1
October 26, 1979 through November 25, 1979	June 1 and December 1
November 26, 1979 through December 31, 1979	July 7 and January 7

Each of the 30 basic rental payments shall be in an amount equal to 5.26605% multiplied by the Purchase Price (as defined below) of each Unit.

The term "Purchase Price" shall mean the base price or prices of each Unit subject to this Lease on the date of such payment as set forth in the related Builder's invoice or invoices delivered to the Trustee in accordance with the terms of the Agreement to Acquire and Lease (which shall include any applicable freight charges).

If any of the semi-annual rental payment dates referred to above is not a Business Day (as such term is hereinafter defined) the semi-annual rental payment otherwise payable on such date shall then be payable on the next preceding Business Day. The term "Business Day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Hartford, Connecticut or California are authorized or obligated to remain closed.

The Lessee agrees to make all payments (unless otherwise instructed in writing by the Trustee) due to the Trustee hereunder in immediately available funds on the date due at Hartford National Bank & Trust Company, 77 Main Street, Hartford, Connecticut 06115, for the Account of General Electric Credit Corporation, Account No. 021-1515 or at such other place as the Trustee may direct.

Notwithstanding anything to the contrary in this §3, any amounts received by the Trustee by virtue of demurrage charges payable with respect to any Unit when not operated subject to a Permitted Sublease (as hereinafter referred to) shall be paid to the Lessee promptly upon receipt thereof so long as an Event of Default hereunder, or any event which with notice or lapse of time or both would constitute an Event of Default, shall not have occurred and be continuing.

§4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§7 and 10 hereof, shall terminate on the fifteenth anniversary of the Closing Date with respect to such Unit. Except for obligations of the Lessee hereunder which are specifically stated to terminate at a fixed time, the obligations of the Lessee hereunder (including, but not limited to, the obligations under §§3, 6, 7, 9, 11, 13, 17 and 20 hereof) shall survive the expiration of the term of this Lease.

§5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the corresponding identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain or cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words, "OWNERSHIP SUBJECT TO AN AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Trustee's and the Owner's title to such Unit and the rights of the Trustee under this Lease. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been delivered to the Trustee and the Owner and duly filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Trustee and the Owner an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Trustee's and the Owner's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Trustee or the Owner in such Units.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by any Permitted Sublessee (as hereinafter defined),

so long as a Permitted Sublease (as hereinafter defined) with such Permitted Sublessee shall remain in effect, or their respective affiliates, on railroad equipment used by them of the same or a similar type for convenience of identification of their respective rights to use the Equipment under such Permitted Sublease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Permitted Sublessee therein.

§6. *Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay or cause to be paid, and on written demand to indemnify and hold the Trustee (both in its individual and fiduciary capacities), the estate held by the Trustee under the Trust Agreement and the Owner harmless from all taxes (income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible], stamp and minimum [imposed under Section 56 of the Internal Revenue Code of 1954, as amended] taxes), assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Trustee, the Owner, the trust estate created by the Trust Agreement, the Builders or the Lessee by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any Unit or any part thereof; the manufacture, purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; this Lease, any sublease or any assignment thereof to the Trustee; any payment made pursuant to any such agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however:* (i) Taxes of the United States or of any state or local government or governmental subdivision or authority thereof and (if and to the extent that any person indemnified hereunder is currently allowed a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Trustee (in its individual capacity) or the Owner, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; and (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by or on behalf of the Owner or any transfer or disposition by or on behalf of the Owner resulting from bankruptcy or other proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease, without the consent of the Lessee, unless, in each case, such transfer or disposition is in connection with a Casualty Occurrence or an Event of Default shall have occurred and be continuing; *provided, however,* that the Lessee shall not be required to pay any Taxes during the period it may be contesting or causing to be contested the same in the manner provided in the third paragraph of this §6. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United States or of any state or local government or governmental subdivision thereof, or of any foreign country or subdivision or authority thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; *provided, however,* that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings.

The amount which the Lessee shall be required to pay with respect to any Taxes indemnified against pursuant to this §6, shall be an amount sufficient to restore the indemnified party to the same after-tax position the indemnified party would have been in had such Taxes not been imposed.

If a claim is made against an indemnified party for any Taxes indemnified against under this §6, the indemnified party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, such indemnified party shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is

necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, or cause to be contested, at its own expense, the validity, applicability or amount of such Taxes in the name of such indemnified party; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party, which consent shall not be unreasonably withheld. The Owner and the Trustee shall provide the Lessee, at the Lessee's expense, with such assistance in contesting the amount or applicability of any Taxes as the Lessee may reasonably request. If such indemnified party shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, such indemnified party shall pay to the Lessee the amount of such refund or interest net of expenses, but only so long as no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Lessee under this §6 or arising out of this §6, except obligations resulting from the second sentence of the first paragraph of this §6, the Lessee shall either make or cause to be made such report or return in such manner as will show the interests of the Trustee in the Units or shall promptly notify or cause to be notified the Owner and the Trustee of such requirement and shall make or cause to be made such report or return in such manner as shall be satisfactory to the Owner and the Trustee. All costs and expenses (including reasonable legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee. The Trustee shall transmit to the Lessee all written notices of Taxes due received from a taxing authority within 60 days after receipt thereof, and any prejudice suffered by the Lessee as a result of the failure of the Trustee to forward such notices in a timely manner shall be borne by the Trustee, unless the Lessee had actual knowledge of or should have been reasonably aware of any such Taxes.

All the obligations of the Lessee under this §6 shall survive and continue, notwithstanding the termination of this Lease, but only with respect to periods included in the term of this Lease. Payment due from the Lessee under this §6 shall be made directly to the indemnified party, except to the extent paid to a governmental agency or taxing authority. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

The Lessee shall furnish or cause to be furnished promptly, upon request, such information and data as are normally available to the Lessee and which the Trustee or the Owner reasonably may require to permit compliance with the requirements of any taxing authorities.

§7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged beyond economic repair within the reasonable determination of the Lessee, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee or any Permitted Sublessee for a period in excess of the then remaining term of this Lease, except requisition by condemnation or otherwise for use for all or less than the remaining term of the Lease in respect of such Unit (such occurrences being hereinafter called "Casualty Occurrences"), during the term of this Lease with respect to such Unit, or until such Unit shall have been returned in the manner provided in §11 or §13 hereof, the Lessee shall promptly and fully notify or cause to be notified the Owner and the Trustee with respect thereto. On the rental payment date in respect of such Unit suffering a Casualty Occurrence (not earlier than the first regular semi-annual rental payment date) next succeeding the delivery of such notice (or, in the event such rental payment date will occur within 15 days after delivery of notice, on the following rental payment date, or, in the event the term of this Lease has already expired or will expire within 15 days after delivery of such notice, on a date within 15 days of such delivery), the Lessee shall pay or cause to be paid to the Trustee an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value of such Unit as of such payment date (such rental payment date being hereinafter

called the "Calculation Date"). Upon the making of such payment by or on behalf of the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Trustee shall be entitled to recover possession of such Unit (subject to the rights of the Lessee in the third paragraph of this §7).

If the date upon which the making or causing to be made of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit shall pay or cause to be paid interest thereon from the end of such term to the date of such payment at the rate of 10% (or such lesser amount as may be legally enforceable).

The Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Trustee and no Event of Default hereunder, or event which with notice or lapse of time or both would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to retain the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Trustee. If any such Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, has occurred and is continuing, the Lessee shall promptly pay all such proceeds to the Trustee.

The Casualty Value of each Unit as of the Calculation Date for each such Unit shall be that percentage of the Purchase Price of each Unit as is set forth in Schedule B hereto opposite such date.

In the event of the requisition for use of any Unit during the term of this Lease for all or less than the remaining term of the Lease in respect of such Unit, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred (other than obligations hereunder with respect to the maintenance and upkeep of the Units which may be rendered impossible by virtue of control of the Units by any requisitioning authority; *provided, however, that the foregoing shall in no way excuse the Lessee from performing such obligations upon termination of such requisition*), except that if such Unit is returned at any time after the end of the term of this Lease with respect to such Unit, the Lessee shall be obligated to return such Unit to the Trustee pursuant to §11 or §13 hereof, as the case may be, promptly upon such return by the requisitioning authority rather than at the end of the term of this Lease as to such Unit; but the Lessee shall in all other respects comply with the provisions of said §11 or §13, as the case may be, with respect to such Unit. All payments received by the Trustee or the Lessee from the requisitioning authority for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing; and all payments received by the Trustee or the Lessee from the requisitioning authority for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Trustee.

Except as hereinabove in this §7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Trustee in accordance with the terms of this Lease (including the storage period provided under §§11 and 13 hereof), maintain or cause to be maintained, at its own expense, property and casualty insurance in respect of the Units at the time subject hereto, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned by them and in amounts and against risks customarily insured against by the Lessee on similar equipment owned or leased by it, in each case satisfactory to the Owner and the Trustee. The proceeds of any property insurance shall be payable to the Trustee, the Owner and the Lessee as their interests may appear.

The Lessee will, at all times prior to the return of the Equipment to the Trustee in accordance with the terms of this Lease, at its own expense, carry and maintain or cause to be carried and maintained

public liability insurance with respect to third party personal and property damage in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least not less comprehensive in amounts and against such risks customarily insured against by the Lessee in respect of Equipment owned or leased by it similar in nature to the Units, in each case satisfactory to the Owner and the Trustee.

Any policies of insurance carried in accordance with this §7 shall (i) require 30 days' prior notice of cancellation or material change in coverage to the Owner and the Trustee, (ii) name the Owner and the Trustee as additional named insureds and loss payees, as their interests may appear without liability for payment of premiums or commissions on their part, and (iii) in the event that such policies shall contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Owner and the Trustee in such policy the insurance shall not be invalidated by any action or inaction of the Lessee or any other person and shall insure the Owner and the Trustee regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person. On or before the delivery of any Unit of Equipment under this Lease and on or before June 1 of each year, the Lessee shall deliver to the Owner and the Trustee a certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy.

§8. *Reports.* On or before June 1 in each year, commencing with the calendar year 1980, the Lessee will furnish or cause to be furnished to the Owner and the Trustee an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or, in the case of the first such statement, since the date of this Lease (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner or the Trustee may reasonably request prepared by an independent qualified engineer which may be the chief mechanical officer of any Permitted Sublessee, (b) stating that, to its knowledge in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by §5 hereof have been preserved or replaced, and (c) stating the name and address of each sublessee of each Unit at that time. The Lessee shall also provide the Owner and the Trustee with an accurate statement containing the information set forth in the clause (c) of the foregoing sentence on or before December 1 of each year, commencing with the calendar year 1980. The Owner and the Trustee shall have the right by their agents to inspect the Units and the Lessee's and its agent's records with respect thereto at such reasonable times as the Owner or the Trustee may request during the continuance of this Lease.

The Lessee agrees at its expense to prepare and deliver or cause to be prepared and delivered to the Owner and the Trustee within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner and the Trustee) any and all reports (other than income tax returns) to be filed by the Owner and the Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Trustee of the Units or the leasing thereof to the Lessee or the subleasing thereof to any Permitted Sublessee.

§9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* NEITHER THE OWNER NOR THE TRUSTEE MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE OWNER NOR THE TRUSTEE MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between

the Trustee and the Lessee, are to be borne by the Lessee; but the Trustee hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Trustee may have against any Builder. Neither the Trustee nor the Owner shall have responsibility or liability to the Lessee or any other person with respect to any of the following, regardless of any negligence of the Owner or the Trustee: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance and Approval shall be conclusive evidence as between the Lessee and the Trustee that the Units described therein are in all the foregoing respects satisfactory to the Lessee; and the Lessee will not assert any claim of any nature whatsoever against the Trustee or the Owner based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Trustee, to comply and will use its best efforts to cause any Permitted Sublessee to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all the laws of the jurisdiction in which its, or any Permitted Sublessee's operations involving the Unit may extend, with the interchange rules of the Association of American Railroads and with all rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will or will use its best efforts to cause any Permitted Sublessee of such Units to fully conform therewith at no expense to the Trustee; *provided, however*, that the Lessee may upon written notice to the Trustee, in good faith, contest or cause to be contested the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Trustee, adversely affect the property or rights of the Trustee, under this Lease.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and, in any event, in a condition that will comply with the applicable rules of the Association of American Railroads, as in effect from time to time, and, in addition, in the case of box cars, will cause such Unit to qualify as a box car of "XM Class" as defined, as of January 2, 1979, by the Association of American Railroads; *provided, however*, that the Lessee shall not be required to keep any Unit in actual "XM" service.

The Lessee and its affiliates, at their own cost and expense, may from time to time make such alterations, modifications and additions (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the United States Department of Transportation, the Interstate Commerce Commission or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called "Additions") to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease; *provided, however*, that no such Addition shall be made unless it is readily removable from the Unit to which it relates without causing material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such Addition not been made assuming the Unit was then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Trustee if: (i) such Part is in replacement of or in substitution for, and not

in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part, (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the terms of the second or third paragraph of this §9 or (iii) notwithstanding the provisions of the fourth paragraph of this §9, such Part cannot be readily removed from the Unit to which it relates without causing material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee. The term "Part" for the purposes of this paragraph and §13 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Lessee shall pay or cause to be paid, and shall protect, indemnify and hold the Trustee (in its individual and fiduciary capacities) and the Owner, their successors, assigns, principals, agents and servants (hereinafter called "Indemnified Persons"), directly or as third party beneficiaries hereof, harmless from and against, any and all costs, expenses, causes of action, suits, damages, losses, penalties, claims, demands, or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses (including without limitation reasonable attorneys' fees and expenses of any Indemnified Person) relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or imposed by statute; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof or from the negligence of the Trustee or the Owner; or (vi) any violation (except by the Indemnified Person seeking indemnity hereunder) or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, subleasing, ownership, use, replacement, adaptation or maintenance thereof; *provided, however*, that the Lessee shall not be obligated hereunder to indemnify any Indemnified Person for any such matters arising from that Person's gross negligence or willful misconduct. All payments hereunder shall be made directly to the Indemnified Person. The Lessee shall be obligated under this §9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this §9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's reasonable request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this §9, the Lessee shall pay or cause to be paid such payment to such Indemnified Person in an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in

respect of the payment of the expense indemnified against, and of any other such taxes as determined in the discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of, or the making of provision satisfactory to the Indemnified Person for the full payment of, any indemnities as contained in this §9 by the Lessee, and provided that no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this §9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

The Lessee further agrees to indemnify, protect and hold harmless each Indemnified Person from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against each Indemnified Person because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by any Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by any Builder which infringes or is claimed to infringe on any patent or other right.

The indemnities contained in this §9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this §9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee, the Owner, or the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

§10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) payment of any part of the rental provided in §3 hereof or payment in respect of any Casualty Occurrence pursuant to §7 hereof or of any other sums due hereunder shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for 10 days after such payment is due; or

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof; or

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Agreement to Acquire and Lease or in any other agreement related hereto or thereto and such default shall continue for 30 days after written notice from the Trustee to the Lessee specifying the default and demanding that the same be remedied; or

(D) any representation or warranty made by the Lessee herein or in the Agreement to Acquire and Lease or in any certificate or statement furnished to the Owner or the Trustee pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof; or

(E) the Lessee shall (i) apply for or consent to the appointment of, or taking possession by, a receiver, trustee or liquidator of itself or any of its properties or assets, (ii) be unable, or admit in writing its inability, to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of Title 11 of the United States Code, as now constituted or hereafter amended or any other applicable bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or

liquidation law or statute, or file an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or if corporate action shall be taken by it for the purpose of effecting any of the foregoing; or any proceedings shall be commenced against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease or under the Agreement to Acquire and Lease under Title 11 of the United States Code, as now constituted or hereafter amended, or any other applicable bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions and such proceedings shall continue unstayed and in effect for any period of 60 days;

then, in any such case, if any Permitted Subleases are then in effect, upon notice by the Trustee to the Lessee, and without any other action or consents (i) the participation of the Lessee as sublessor under any Permitted Sublease may be terminated at the option of the Trustee and (ii) the Trustee may at its option be substituted for the Lessee, for all purposes, as the sublessor under such Sublease, and, whether or not such notice is given, the Trustee may proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof. In addition the Trustee at its option, may, in case of the occurrence of any Event of Default:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Trustee may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same, free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Trustee, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Trustee reasonably estimates to be obtainable for the Unit during such period under a lease (otherwise than as to its term) similar to this Lease, such present value to be computed in each case on the basis of a 10% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date for such Unit on or next preceding the date of termination over the amount the Trustee reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; *provided, however*, that in the event the Trustee shall have sold or leased any Unit, the Trustee in lieu of collecting any amounts payable to the Trustee by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Trustee and the Lessee shall pay to the Trustee on the date of such sale or leasing, as the case may be, as liquidated damages for loss of a bargain and not as a penalty (i) in the case of such a sale an amount equal to

the excess, if any, of the Casualty Value for such Unit, as of the rental payment date for such Unit on or next preceding the date of termination, over the net proceeds of such sale, and (ii) in the case of such a leasing, an amount equal to the excess, if any, of the present value of all rental for such Unit which would otherwise have accrued hereunder from the date of termination to the end of the term of this Lease as to such Unit over the sum of (I) the then present value of all rental for such Unit required under such new lease plus (II) the then present value of the rental (if any) which the Trustee reasonably estimates to be obtainable for the Unit during the period commencing on the termination of such new lease and ending on the date the term of this Lease would have terminated if it had not been terminated early due to the default, each such present value to be computed in each case on the basis of a 10% per annum discount, compounded, in the case of rental which is estimated under clause II of this sentence, semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated and, in the case of rental under such new lease, periodically from the respective dates upon which such rental shall be payable thereunder.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Trustee's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Trustee shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make such rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies; and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Trustee.

The Lessee also agrees to furnish the Trustee promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default, or which with notice or lapse of time or both would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this §10 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of such official's operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

§11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to §10 hereof, the Lessee shall (at its own cost and expense) forthwith deliver or cause to be delivered possession of the Units to the Trustee and shall give or cause to be given prompt telegraphic and written notice to the Association of American Railroads and Permitted Sublessees and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Trustee pursuant to this §11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear and modifications, if any, permitted by this Lease excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to the Trustee as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by the Trustee and there assembled,

(b) furnish and arrange for the Trustee to store such Units on any lines of railroad or premises approved by the Trustee until such Units have been sold, leased or otherwise disposed of by the Trustee but not in any event for longer than 270 days, and

(c) cause the Units to be moved to such interchange point or points as shall be designated by the Trustee upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee (and the Lessee will maintain the insurance required by §7 of this Lease to be maintained during this period) and are of the essence of this Lease; and, upon application to any court of equity having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. In the event that the Units or any thereof are sold, the Lessee shall pay to the Trustee the per diem interchange charge for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §11, the Lessee hereby irrevocably appoints the Trustee as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Trustee without the consent of the Lessee; but the Lessee shall be under no obligation to any assignee of the Trustee except upon written notice of such assignment from the Trustee. All the rights of the Trustee hereunder shall inure to the benefit of the Trustee's successors and assigns, except to the extent the same may be reserved to the Trustee.

So long as no Event of Default hereunder shall have occurred and be continuing, the Lessee shall be entitled to the possession of the Units in accordance with the terms of this Lease but, except as permitted by the provisions of this §12, the Lessee shall not assign or transfer its leasehold interest or any of its duties under this Lease, in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than as permitted by the provisions of this §12 and other than an encumbrance created by the Trustee and not the result of an Event of Default or resulting from claims against the Trustee not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Trustee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Trustee, materially adversely affect the interest of the Trustee in the Equipment or this Lease. Except to the extent permitted by the provisions of this §12, the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units.

So long as no Event of Default hereunder, or any event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Lessee may enter into subleases with companies doing business in or having their principal places of business in the United States of America allowing use of the Equipment by such companies without obtaining the prior consent of the Trustee if each such sublease shall be substantially in the form of one of the two forms of lease agreement attached as Exhibit II hereto; *provided, however*, any such subleases and any other subleases permitted by this §12 for the use of the Units (i) shall not have a term (together with renewal options exercisable solely by the sublessee) beyond the term of this Lease in respect of the Units subleased thereunder and (ii) shall be assigned to the Trustee under an assignment and agreement (a "Sublease Assignment") substantially in the form attached as Exhibit C to the Agreement to Acquire

and Lease (and the sublessee thereunder shall execute and deliver a Consent and Agreement substantially in the form attached thereto).

In addition, the Lessee may enter into subleases with companies doing business in or having their principal places of business in the United States of America allowing use of the Equipment by such companies under subleases that are not substantially in the forms attached as Exhibit II hereto; *provided, however*, each such sublease shall otherwise comply with the provisions of this §12 and contain the following provision:

"Any provision hereof to the contrary notwithstanding, this sublease, and the grant of any rights and privileges to the sublessee hereunder, are hereby made subject and subordinate to the title and rights of The Connecticut Bank and Trust Company, as trustee and lessor (the 'Prime Lessor'), under the Lease of Railroad Equipment dated as of May 1, 1979 (the 'Prime Lease') between the Prime Lessor and ITEL Corporation. Accordingly, it is understood that this sublease may be terminated by the Prime Lessor and its successors and assigns, upon the occurrence of an Event of Default under the Prime Lease."

Subleases meeting the requirements of this §12 are referred to herein as "Permitted Subleases".

The Lessee shall not assign or sublease or permit the assignment or sublease of any Unit of Equipment to service involving the operation and maintenance thereof predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of the Code. The Lessee may receive and retain compensation for such use from other companies so using any of the Units so long as no Event of Default hereunder has occurred and is continuing.

The Lessee acknowledges that it will continue to be obligated and bound by all the terms, covenants and conditions of this Lease, notwithstanding any delegation of any duties hereunder to any Permitted Sublessee.

Notwithstanding the Lessee's ability to enter into Permitted Subleases, as hereinabove provided, it is expressly understood that the Trustee will in no event be deemed to have endorsed either (i) the credit-worthiness of any Permitted Sublessee; or (ii) the Permitted Sublessee's use of the Equipment in a manner that might affect the tax benefits available to the Owner or the Trustee under this Lease.

Nothing in this §12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease and in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, *provided that* such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and shall have assumed all of the obligations of the Lessee under this Lease, each Sublease Assignment, each Purchase Order Assignment and the Agreement to Acquire and Lease; *provided, further*, that the net worth of such assignee or transferee shall be at least equal to that of the Lessee at the time of such merger, consolidation or acquisition.

§13. *Return of Units upon Expiration of Term.* On or prior to the termination of the term of this Lease with respect to each Unit or as soon as practicable on or after the termination of the term of this Lease with respect to each Unit and in any event not later than 45 days after the termination of the term of this Lease with respect to each Unit the Lessee will, at its own cost and expense, at the request of the Trustee, cause such Unit to be transported to such point or points on any Permitted Sublessee's lines or on the lines of the Lessee's owned railroads as shall be designated by the Trustee immediately prior to such termination and shall arrange at the Lessee's expense to store such Unit on any Permitted Sublessee's lines of railroad or premises of such Sublessee or on the lines of the Lessee's owned railroads approved by the Trustee for a period commencing on the date of its arrival at any such point and extending thereafter to a date not later than 180 days. During any such storage period the Lessee

will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable for any injury to or the death of any person exercising, either on behalf of the Trustee or any prospective purchaser or user, the rights of inspection granted under this sentence, except in the case of negligence or wilful wrongdoing of the Lessee or of its employees or agents and except to the extent otherwise provided by law. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Trustee pursuant to this §13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any Part title to which is in the Trustee pursuant to §9 hereof and have removed therefrom at Lessee's expense any Part or Addition title to which is in the Lessee or any other person pursuant to such §9 and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. If any Unit suffers a Casualty Occurrence during any period prior to its return to the Trustee as provided for in this §13, the Lessee shall pay to the Trustee the Casualty Value of such Unit as determined in accordance with §7 hereof. All gross amounts earned in respect of any Unit shall, from and after the termination of the term of this Lease as to such Unit, belong to and be the property of the Trustee.

§14. *Recording.* The Lessee, at its own expense, will cause this Lease, each Lease Supplement and any Permitted Subleases (including the required assignment thereof) to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303. The Lessee, at its own expense, will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Trustee (including, but not limited to, Uniform Commercial Code filings) for the purpose of proper protection, to its satisfaction, of the Trustee's interest in the Units, or for the purpose of carrying out the intention of this Lease.

§15. *Additional Opinions.* The Lessee will promptly furnish to the Trustee evidence of every filing, registering, depositing or recording required pursuant to §14 hereof, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Trustee. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§16. *Trustee's Right to Perform for the Lessee.* If the Lessee fails to perform or comply with any of its agreements contained herein, the Trustee may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Trustee incurred in connection with such performance or compliance, together with interest on such amount at the rate of 11% per annum (or such lesser amount as may be legally enforceable), shall be payable by the Lessee upon demand.

§17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to interest at a rate of 11% per annum on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or by registered or certified mail, postage prepaid, addressed as follows:

if to the Trustee, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, with a copy to the Owner, at P.O. Box 8300, Stamford, Connecticut

06904, attention of Manager-Operations, Leasing and Industrial Loans with a separate copy to Attention of Manager—Rail Financing;

if to the Lessee, at Two Embarcadero Center, San Francisco, California 94111, attention of Vice President and Treasurer, Transportation Services Group, with a separate copy to Manager, Financial Administration, Transportation Services Group;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above or so furnished for such party.

§19. *Immunities; No Recourse.* (1) No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Trustee, the Owner or the Lessee, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, as such, or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

(2) It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties and agreements herein made on the part of the financial institution acting as Trustee hereunder are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution, including its successors and assigns, or for the purpose or with the intention of binding said financial institution personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Trustee solely in the exercise of the powers expressly conferred upon the Trustee as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee or the Owner on account of any representation, warranty or agreement herein of the Trustee, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

§20. *Income Tax Indemnity.* (a) It is agreed by and between the Lessee and the Trustee that this Lease has been entered into on the basis that the Owner, as the beneficial owner of each Unit of Equipment, shall be entitled to such deductions, credits and other benefits as are provided by the Code to an owner of property, including without limitations for federal income tax purposes (i) deductions for depreciation of each Unit of Equipment under Section 167 of the Code computed on the basis (A) that each such Unit will have a basis under Section 167(g) of the Code at least equivalent to the Purchase Price in respect of such Unit, (B) of the double-declining balance method of depreciation authorized by Section 167(b)(2) of the Code switching to the sum-of-the-years digits method of depreciation authorized by Section 167(b)(3) of the Code when most beneficial to the Owner without obtaining the consent of the Commissioner of Internal Revenue in accordance with Treasury Regulation §1.167(a)-11(c)(1)(iii), (C) of the asset depreciation range system of Treasury Regulation §1.167(a)-11, provided the Owner properly effects the election required by such regulation, (D) of an asset depreciation period of 12 years, (E) of a net salvage value of zero after the reduction permitted by Section 167(f) of the Code and (F) that the Units of Equipment shall be treated as having been placed in service on the respective dates on which they are delivered and accepted under this Lease (herein called the "ADR Deductions") and (ii) investment credit pursuant to Section 38 of the Code, at least equal to 10% of the aggregate Purchase Price in respect of each Unit of Equipment (herein called the "Investment Credit"). It is further agreed by the parties hereto that they have assumed in their negotiation of the terms of the lease that the Federal rate of tax imposed on taxable income of corporations in excess of \$100,000 during the year 1979 is 46%, that the applicable rate of tax imposed by any State on the taxable income of the Owner in 1979 will be the same as that prevailing on March 21, 1979, and that, for Federal income tax purposes, all amounts includible in the gross income of the Owner with respect to the Equipment and all deductions allowable to the Owner with respect to the Equipment will be treated as derived from, or allocable to, sources within the United States.

(b) The Lessee agrees to maintain sufficient records to verify the amount of income, deductions, and credits in respect of each Unit allocable to sources within and without the United States. Within 90 days after the end of each calendar year, beginning with the year 1979, the Lessee agrees to furnish to the Owner a statement to the effect that none of the Units has been used outside the United States during the preceding calendar year, or, if any of the Units was used outside the United States during such year, that the amount of such usage did not impair the ability of the Owner to treat, for Federal income tax purposes, all income, deductions and credits relating to all uses of the Units subject to the Lease during such year as being derived from, or allocable to, sources within the United States, which statement shall be signed by the Vice-President and Treasurer of the Lessee's Transportation Services Group or some other officer of comparable authority having actual knowledge of the facts at issue. If the statement hereinabove provided for shall not be furnished by the Lessee to the Owner or in the event such information is required by the Owner in connection with an audit by the Internal Revenue Service of the tax returns of the Owner, the Lessee agrees to give to the Owner, within 60 days after request therefor, written notice describing the amount of income, deductions, and credits allocable to sources within and without the United States and specifying in reasonable detail the basis on which such allocations were made.

(c) The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that the Lessee and any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

(d) The Lessee represents and warrants for purposes of this §20 that

(1) when delivered and accepted under the Lease, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code;

(2) when delivered and accepted under the Lease, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Trustee;

(3) when delivered and accepted under the Lease, no other person will have claimed the Investment Credit or the ADR Deductions with respect thereto;

(4) at all times during the original term of the Lease and renewal periods, the Units will constitute "section 38 property" within the meaning of Section 48(a) of the Code;

(5) at all times during the original term of the Lease and renewal periods, the Owner will be entitled to treat, for Federal income tax purposes, each item of income, deduction and credit relating to all Units subject to this Lease as being derived from, or allocable to, sources within the United States.

(e) If (1) by reason of any act of commission or omission, misrepresentation, breach of any agreement, covenant, or warranty contained in this Lease, or any other agreement relating to the lease of the Units, on the part of the Lessee, or (2) by reason of any act of commission or omission, misrepresentation, breach of any agreement, covenant or warranty contained in this Lease by any sublessee or assignee of the Lessee the Owner shall lose the right to claim, shall not claim (as the result of a good faith determination of independent tax counsel selected by the Owner and approved by the Lessee (hereinafter referred to as "Tax Counsel")) that such claim is not allowable), shall suffer a disallowance of, or shall be required to recapture all or any portion of its proportionate share of the Investment Credit or the ADR Deductions (any such event hereinafter referred to as a "Loss"), then the Lessee shall pay to the Owner as an indemnity, on the next succeeding rental payment date (as provided for in the Lease) after written notice to the Lessee by the Owner of such Loss, and on each rental payment date thereafter during the remaining term of the Lease, such amount or amounts as shall, in the reasonable opinion of the Owner, cause the Owner's after-tax economic yields and cash flows, computed on the same assumptions, including tax rates, as were utilized by the Owner in originally evaluating this transaction (such economic yields and cash flows hereinafter called the "Net

Economic Return'') to equal the Net Economic Return that would have been realized by the Owner if such Loss had not occurred.

(f) In the event that the Owner suffers a Loss and the Owner and the Lessee are unable to agree on the indemnity amount required to restore the Owner's Net Economic Return, as aforesaid, then the Lessee shall pay to the Owner, in lieu of the amount provided for in paragraph (e) of this §20, such amount, or, from time to time, such amounts as, after deduction of all taxes required to be paid by the Owner in respect of the receipt of such amounts under the laws of any Federal, state, local or foreign government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Owner from time to time as a result of any such Loss plus the amount of any interest, penalties or additions to tax payable as a result of any such Loss. If, as a result of a Loss, the aggregate Federal, state or local income taxes paid by the Owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Loss occurred, then the Owner shall pay the Lessee the amount of such difference in taxes, plus any additional tax benefits realized by the Owner as the result of such payment; *provided, however*, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this paragraph in respect of a Loss, less (y) the amount of all prior payments by the Owner to the Lessee hereunder. The amount payable to the Owner pursuant to this paragraph shall be paid within 30 days after receipt of a written demand therefor from the Owner accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable (but not prior to the earlier of (i) the filing of a return or the acceptance of an audit report in which such Loss is reflected and (ii) the payment of the additional income tax that becomes due as the result of the Loss and, in the case of amounts which are being contested in accordance with §20 of this Lease, not prior to the time provided in this §20). Any payment due to the Lessee from the Owner pursuant to this paragraph shall be paid within 30 days after the Owner realized any such savings in its income taxes or additional tax benefits, as the case may be.

(g) If the Owner is required by the Internal Revenue Service to include in its gross income an amount in respect of any replacement, improvement and/or addition to any Unit of Equipment or as the result of any action taken by the Lessee or any sublessee or assignee of the Lessee (which amounts are hereinafter called "Capital Expenditures"), then the Lessee shall pay directly to the Owner, as an indemnity, in immediately available funds, such amount or amounts which, after deduction of all taxes required to be paid by the Owner in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority of the United States, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Owner from time to time as a result of such Capital Expenditure plus the amount of any interest, penalties or additions to tax payable as a result of any such Capital Expenditure. If as a result of any such Capital Expenditure the aggregate Federal, state or local income taxes paid by the Owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Capital Expenditure been made, then the Owner shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Owner as a result of such payment; *provided, however*, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this paragraph (g) in respect of any Capital Expenditures less (y) the amount of all prior payments by the Owner to the Lessee hereunder. The amount payable to the Owner pursuant to this paragraph (g) shall be paid within thirty days after receipt of the written demand therefor from the Owner (but not prior to payment by the Owner of the additional Federal, state or local income tax, as the case may be, which becomes due as a result of the said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee from the Owner pursuant to this paragraph (g) shall be paid within thirty days after the Owner realizes any such savings in its income taxes or additional tax benefits, as the case may be.

(h) The Lessee agrees to give the Owner, within 30 days after request therefor, written notice describing in reasonable detail Capital Expenditures made and specifying the cost thereof with respect

to each Unit of Equipment if such information is required in connection with an audit by the Internal Revenue Service of the tax returns of the Owner.

(i)(1) If the Internal Revenue Service shall propose an adjustment in the Federal income taxes of the Owner for which the Lessee would be required to indemnify the Owner pursuant to paragraphs (e), (f) and/or (g) of this §20 and the amount of the indemnity which the Lessee would be required to pay would exceed \$100,000 then, if requested by the Lessee in a timely written request, the Owner shall request an opinion from Tax Counsel as to whether the basis in law and in fact in favor of allowance of the item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Lessee promptly requests the Owner to do so, the Owner shall contest the proposed adjustment; *provided, however*, that Tax Counsel shall determine in his sole and reasonable discretion the nature of all action to be taken to contest such proposed adjustment including (A) whether any action to contest such proposed adjustment shall initially be by way of judicial or administrative proceedings, or both, (B) whether any such proposed adjustment shall be contested by resisted payment thereof or by paying the same and seeking a refund thereof, and (C) if the Owner shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. The Owner shall have full control over any contest pursuant to this paragraph (i) and shall not be obligated to appeal an adverse determination by any court. At any time, whether before or after commencing to take the action set forth in this paragraph (i), the Owner may decline to take such action by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Owner with respect to the adjustment proposed by the Internal Revenue Service or such portion thereof as may be specified in such notice.

(2) The Owner shall not be required to take any action pursuant to this paragraph (i) unless and until the Lessee shall have agreed to indemnify the Owner in a manner reasonably satisfactory to the Owner for any liability or loss which the Owner may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay to the Owner on demand all costs and expenses which the Owner may incur in connection with contesting such proposed adjustment (including reasonable fees and disbursements of counsel selected by the Owner). If the Owner determines to contest any adjustment by paying the additional tax and suing for a refund, the Lessee shall have paid to the Owner an amount equal to the sum on an after-tax basis of any tax, interest, penalties and additions to tax which are required to be paid. Upon receipt by the Owner of a refund of any amounts paid by it based on the adjustment in respect of which amounts it shall have been paid an equivalent amount by the Lessee, the Owner shall pay to the Lessee the amount of such refund together with any interest received by it on such amount. The Lessee shall be obligated to pay to the Owner the amount specified in paragraphs (e), (f) and (g) of this §20 promptly after the Owner has taken all the action that it has agreed in this §20 to take.

(j) Without limiting the effect of any other provision of this §20, if there is any amendment to, or change in, the Code or any Regulation thereunder or any published Revenue Ruling or other document of the Treasury or the Internal Revenue Service, or the rate of tax under the laws of any state which is enacted or adopted on or prior to the delivery and acceptance of the last Unit of Equipment under this Lease with respect to any Unit of Equipment, and if such amendment or change affects the Investment Credit allowable with respect to any Unit or the ADR Deductions allowable with respect to any Unit or the privilege of the Owner to file consolidated Federal, state and local income tax returns with corporations affiliated with it, or if such amendment or change affects the Federal rate of tax or the rate of tax under the laws of any state on the taxable income of corporations, then the amounts of rentals and the Casualty Values under the Lease will be appropriately adjusted upward or downward by such amount or amounts as shall, in the reasonable opinion of the Owner, cause the Owner's Net Economic Return to equal the Net Economic Return that would have been realized by the Owner if such amendment or change had not occurred.

(k) If any item of income or deduction with respect to the Units shall not be treated as derived from, or allocable to, sources within the United States for a given taxable year (any such event hereinafter referred to as a "Foreign Loss"), then the Lessee shall pay to the Owner as an indemnity, on the next succeeding rental payment date (as defined in the Lease) after written notice to the Lessee by the Owner, such amount which, after deduction of all taxes required to be paid by the Owner in

respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority of the United States, shall equal the sum of: (1) the excess of (x) the foreign tax credits which the Owner would have been entitled to for such year had no such Foreign Loss occurred over (y) the foreign tax credit to which the Owner was limited as a result of such Foreign Loss and (2) the amount of any interest, penalties or additions to tax payable as a result of such Foreign Loss.

(l) For purposes of this §20, the term "Owner" shall include General Electric Credit Corporation ("GECC") and any member of an affiliated group, within the meaning of section 1504 of the Code, of which the Owner or GECC is, or may become, a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(m) The liability of the Lessee to make indemnification payments pursuant to this §20 shall, notwithstanding any expiration or termination of the Lease, continue to exist until such indemnity payments are made by the Lessee. All indemnity payments under this §20 shall be made directly to the Owner.

(n) The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

(o) The Owner shall, upon the written request of the Lessee given promptly following receipt of notice of (i) a Loss as provided in paragraph (e), (ii) an adjustment in the amount of the rentals and Casualty Values as provided for in paragraph (j), or (iii) a Foreign Loss as provided for in paragraph (k), submit to a national accounting firm selected by the Owner with the Lessee's reasonable approval (which may be the customary accounting firm employed by the Owner) such information as may be deemed reasonably necessary by such accounting firm to confirm the amounts which the Owner shall have deemed payable as an indemnity under such paragraphs of this §20. Such accounting firm shall report its findings to both the Owner and the Lessee, and any fees incurred by such accounting firm in connection therewith shall be paid by the Lessee.

(p) If any amount is paid by the Lessee to the Owner pursuant to this §20, the Owner shall recompute the Casualty Values with respect to the Equipment in accordance with the manner in which such Values were originally computed to reflect such payment, and an officer of the Owner shall certify to the Lessee either that such values as are set forth in this Lease do not require change or, as the case may be, the new Values necessary to reflect such payment, describing in reasonable detail the basis for computing such new Values; upon such certification, any such new Values shall be substituted for the Casualty Values appearing in this Lease.

§21. *Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Trustee not less than 180 days prior to the end of the original term of this Lease in respect of the Units still subject to this Lease under a particular Lease Supplement, elect to extend such original term of this Lease in respect of all but not less than all the Units then covered by this Lease under such Supplement for a period of one year or such other time acceptable to both the Lessee and the Trustee commencing on the scheduled expiration of such original term of this Lease as to such Units, at a "Fair Market Rental" payable, in arrears, in semi-annual payments on the month and day such rentals were payable for such Units in each year of the original term as to such Units.

Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

If, after 30 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease as to a particular group of Units, the Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of such Units, such rental shall be determined in accordance with the foregoing meaning of such Rental by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent

appraiser by mutual agreement. If no such appraiser is so appointed within 15 days after such notice is given, each party shall appoint an independent appraiser within 15 days after such notice is given, and the two appraisers so appointed shall within 15 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 15 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

§22. *Severability; Effect and Modification of Lease; Third Party Beneficiaries.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof; and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the permitted successors and assigns of a party, each of which shall be deemed to be a third-party beneficiary hereof) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

§23. *Execution.* This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Trustee shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§24. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303.

§25. *Agreements for Benefit of Owner and Trustee's Assigns.* All rights of the Trustee hereunder (including, but not limited to, its rights under §§6, 7, 9, 10, 11, 13 and 20 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Owner and any of the Owner's assigns under the Trust Agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

(CORPORATE SEAL)

Attest:

Edward P. Schneider
.....
ASSISTANT SECRETARY

ITEL CORPORATION

By

Peter B. M...
.....
VICE PRESIDENT / TREASURER

(CORPORATE SEAL)

Attest:

.....
Authorized Officer

THE CONNECTICUT BANK AND TRUST COMPANY,
not in its individual capacity, but solely as
Trustee,

By

.....
Authorized Officer

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 5th day of JUNE 1979, before me personally appeared PATRICK B. McMAHUS to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT AND TREASURER OF ITEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Barbara J. Jackson
Notary Public

(NOTARIAL SEAL)

My Commission expires

BARBARA J. JACKSON
Notary Public, State of New York
No. 31-4626819
Qualified in New York County
Commission Expires March 30, 1981

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss.:

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

.....
Notary Public

(NOTARIAL SEAL)

My Commission expires

SCHEDULE A

Builder	Car Type	AAR Mechanical Destination	Builder's Specification	Builder's Plant	Lessee's Outstanding Order Position	Estimated Unit Base Price	Allowable Escalation Per Unit	Maximum Estimated Unit Price	Road Numbers (Inclusive)	Estimated Time of Delivery
Pullman Standard	89'4" 70 ton Flat Cars	TOFC/COFC	1030	Bessemer, Alabama	1,000	\$46,000	\$1,000	\$47,000	Unallocated	July-October 1979
ACF Industries	89'4" 70 ton Flat Cars	TOFC/COFC	11-05617	St. Charles, Missouri	750	\$46,000	\$2,000	\$48,000	Unallocated	June-December 1979
ACF Industries	50'6" 70 ton Box Cars	XM	11-06863	St. Charles, Missouri	400	150@ \$35,422.16 250@ 37,800.00	\$2,800 2,800	\$38,222.16 40,600.00	GBW-7050-7199 GBW-7200-7449	May 1979 June 1979
FMC Corp.	50'6" 70 ton Box Cars	XM	17964 18031 18070 18071	Portland, Oregon	1,200 375 poss. alt. cars	\$36,000	\$2,800	\$38,800	Unallocated	Fourth Quarter 1979
Pullman Standard	50'6" 70 ton Box Cars	XM	1043 1090 G-44	Bessemer, Alabama	500	\$36,000	\$2,800	\$38,800	Unallocated	July-August 1979

SCHEDULE A—(Continued)

SCHEDULE OF MINIMUM UNITS

(Lessee's best present estimates of delivery, subject to changes in each Builder's delivery schedules)

<u>Month of Delivery, 1979</u>	<u>Box cars</u>	<u>Flat cars</u>	<u>Total of Units</u>
June	325	60	385
July	125	110	235
August	250	240	490
September	—	240	240
October	100	160	260
November	—	60	60
December	50	30	80
			<u>1,750</u>

SCHEDULE B
Casualty Values*

<u>Rental Payment Date No.</u>	<u>Percentage of Purchase Price</u>
1	106.01
2	106.58
3	106.92
4	107.03
5	106.92
6	104.20
7	99.66
8	98.93
9	97.99
10	94.44
11	89.09
12	87.56
13	85.84
14	81.53
15	75.42
16	73.15
17	70.55
18	67.74
19	64.82
20	61.79
21	58.65
22	55.40
23	52.02
24	48.51
25	44.87
26	41.10
27	37.18
28	33.12
29	28.91
30	24.53
Thereafter	20.00

* The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the above schedule opposite each such rental payment date.

Exhibit I
(to Lease of
Railroad Equipment)

LEASE SUPPLEMENT NO.

THIS LEASE SUPPLEMENT NO. dated as of , 197 between THE CONNECTICUT BANK AND TRUST COMPANY, acting not in its individual capacity but solely as Trustee (the "Trustee") under a Trust Agreement dated as of May 1, 1979 with General Electric Credit Corporation (the "Owner") and ITEL CORPORATION (the "Lessee"), acting through its Rail Division.

WITNESSETH:

The Trustee and the Lessee have heretofore entered into a Lease of Railroad Equipment dated as of May 1, 1979 (the "Lease") providing for the execution and delivery of Lease Supplements substantially in the form hereof. The terms defined in the Lease shall have the same meanings when used herein except as the context hereof otherwise requires.

The Trustee and the Lessee hereby acknowledge and agree that Schedule 1 hereto correctly sets forth the term of the Lease with respect to the Units described therein, the basic rent Payment Dates, the Purchase Price, and termination date of the Lease with respect to such Units.

The execution of this Lease Supplement will in no way relieve or decrease the responsibility of the Builder of the Equipment for any warranties it has made with respect to the Equipment and is without prejudice to any right which the Trustee or the Lessee may have against such Builder or any other person, except as otherwise provided in the Lease.

This Lease Supplement may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterpart shall constitute but one and the same instrument.

THE CONNECTICUT BANK AND TRUST COMPANY,
not in its individual capacity, but solely as
Trustee,

By
Title: Authorized Officer
Trustee

ITEL CORPORATION

By
Title:
Lessee

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of ITEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

.....
Notary Public

(NOTARIAL SEAL)

My Commission expires

STATE OF CONNECTICUT
COUNTY OF HARTFORD } ss.:

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

.....
Notary Public

(NOTARIAL SEAL)

My Commission expires

SCHEDULE 1 TO LEASE SUPPLEMENT

, 19

Description of Units of Equipment
including car numbers:

Builder:

Purchase Price: \$ per Unit of Equipment or an
aggregate Purchase Price of \$

Basic rent Payment Dates: and

Lease Termination Date: , 199

Exhibit II
(to Lease of Railroad Equipment)

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this ____ day of _____, 1979, between ITEL CORPORATION, RAIL INTERMODAL DIVISION, a Delaware corporation, Two Embarcadero Center, San Francisco, California, 94111 ("Itel Rail"), as Lessor, and _____ ("Lessee"), as Lessee.

1. Scope of Agreement

A. Itel Rail agrees to lease to Lessee, and Lessee agrees to lease from Itel Rail, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that Itel Rail shall at all times be and remain the lessor of all Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The term of lease with respect to all of the Cars described on each Schedule shall be for fifteen (15) years (the "Initial Lease Term") commencing upon the date when all Cars on such Schedule have been delivered as set forth in Section 3A hereof.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each (the "Extended Lease Term") with respect to all of the Cars described on each Schedule, provided, however, that Itel Rail or Lessee may terminate this Agreement on or after the Initial Lease Term as to all, but not fewer than all, of the Cars on any such Schedule by written notice delivered to the other not less than twelve months prior to the end of the Initial Lease Term or any Extended Lease.

3. Supply Provisions

A. Itel Rail will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to Itel Rail that the sample Car which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and Itel Rail's determination that the Car conforms to the specifications ordered by Itel Rail and to all applicable governmental regulatory specifications, and provided this Agreement has not been terminated, Itel Rail will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed

delivered to Lessee upon acceptance by Itel Rail. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by Itel Rail as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, Itel Rail can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay Itel Rail the rent set forth in this Agreement. Lessee may, at its own option, request Itel Rail to ship the Cars directly to Lessee and unloaded, whereby Lessee agrees to reimburse Itel Rail for all costs incurred in movement to Lessee. To move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee (the "Initial Loading"), Itel Rail agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Itel Rail, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules. Whenever Cars are used or loaded prior to the Initial Loading, or whenever Lessee notifies Itel Rail that it requires the use of a designated quantity of Cars, Itel Rail shall not route such cars away from Lessee.

B. Lessee shall give preference to Itel Rail and shall load the Cars leased from Itel Rail prior to loading substantially similar cars leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

C. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease freight cars from any other party until it shall have received all of the Cars on the Schedule or Schedules. Additional Cars shall be leased from Itel Rail by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by Itel Rail and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to manufacturers' delivery schedules, financing satisfactory to Itel Rail and the mutual acknowledgment of the parties that the addition of such Cars is not likely to reduce Utilization (as defined in Section 6) of all Cars on lease to Lessee to less than 92 percent and mileage at 190 miles per day in any calendar quarter. If, due to the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule shall be delivered to Lessee, the lease term shall be deemed to have commenced on the date the final Car of the most recent group of Cars was accepted by Itel Rail as is set forth in Section 3A.

4. Railroad Markings and Record Keeping

A. Itel Rail and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. Such name and/or insignia shall comply with all applicable regulations.

B. At no cost to Lessee, Itel Rail shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents; (ii) registration in the Official Railway Equipment Register and the Universal Machine

Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Itel Rail shall, on behalf of Lessee, perform all record keeping functions related to the use of the Cars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as Itel Rail shall select.

D. All record keeping performed by Itel Rail hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Itel Rail in a form suitable for reasonable inspection by Lessee from time to time during regular Itel Rail business hours. Lessee shall supply Itel Rail with such reports, including daily telephone reports of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad line as Itel Rail may reasonably request.

5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, Itel Rail will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to Itel Rail for any repairs required for damage not noted at the time of interchange.

B. Except as provided above, Itel Rail shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of Itel Rail, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by Itel Rail. Itel Rail shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the lease term of such Cars. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without Itel Rail's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without Itel Rail's prior written consent, Lessee shall be liable to Itel Rail for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with Itel Rail.

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Code of Car Service Rules-Freight for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by obtaining physical loss and damage, all risks insurance in the full value of the Cars. Lessee shall also maintain bodily injury and property damage liability insurance in such sum as may be specified by Itel Rail. Lessee shall furnish Itel Rail concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months with certificates of insurance with respect to the insurance required as aforesaid signed by an independent insurance broker. All insurance shall be taken

out in the name of Lessee and Itel Rail (or its assignee if requested by Itel Rail) as their interests may appear. If Lessee defaults in paying any insurance premium Itel Rail may pay such premium for Lessee's account.

D. Itel Rail agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues. Itel Rail shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. Itel Rail and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. Itel Rail shall review all applicable tax returns prior to filing.

6. Lease Rental

A. Lessee agrees to pay the following rent to Itel Rail for the use of the Cars:

(i) Itel Rail shall receive all payments made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to mileage charges, and car hire payments (both of which payments made to Lessee are hereinafter collectively referred to as "Payments") if the Utilization (as defined below) of all of the Cars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than 92 percent and 190 miles per day. For the purpose of this Agreement, Utilization of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that car hire payments are earned by Lessee on the Cars, commencing from the Initial Loading, or the 31st day after release by the manufacturer, whichever shall occur first, and the denominator of which is the aggregate number of days in each calendar year that the Cars are on lease to Lessee, commencing from the Initial Loading or the 31st day after release by the manufacturer, whichever shall occur first. In addition, Itel Rail will receive, as additional rental, all monies earned by the Cars prior to their Initial Loading.

(ii) In the event Utilization exceeds 92 percent and 190 miles per day in any calendar year, Itel Rail shall receive an amount equal to the Itel Rail Base Rental plus an amount equal to 60 percent of the Payments earned in excess of the Itel Rail Base Rental. For the purpose hereof, Itel Rail Base Rental shall be an amount equal to the total Payments for the calendar year which is the equivalent of the sum derived from Utilization at 92 percent and mileage at 190 miles per day. (The above determination of Itel Rail Base Rental insures that Lessee will, if the combination of Utilization and mileage is greater than 92 percent and 190 miles per day in any calendar year, receive 40 percent of all the Payments made by other railroads for use or handling of the Cars in excess of the Itel Rail Base Rental.)

(iii) If Itel Rail pays other railroads to move Cars in accordance with Section 3A, except for any expenses incurred to deliver such Cars to Lessee's railroad line, Lessee shall reimburse Itel Rail for such expenses only from and out of monies received by Lessee pursuant to subsection 6A(ii).

(iv) The rental charges payable to Itel Rail by Lessee shall be paid from the Payments received by Lessee in the following order until Itel Rail receives the amounts due it pursuant to this Section: (1) car hire payments; (2) mileage charges and (3) other.

(v) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight and the appropriate amount due as a result thereof is received by Itel Rail, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

B. The calculations required above shall be made within five (5) months after the end of each calendar year. However, to enable Itel Rail to meet its financial commitments, Itel Rail shall prior to making such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due Itel Rail, Itel Rail shall within three (3) months after the end of each calendar quarter, calculate on a quarterly basis the amount due it pursuant to this section. Lessee shall, within ten (10) days after the three-month period, remit to Itel Rail a sum equal to any difference between Payments received by Itel Rail on behalf of the Lessee and the Itel Rail Base Rental. Following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

C. Itel Rail may, at its option, terminate this Agreement if the ICC shall, at any time, require that Lessee spend funds not earned by the Cars in order for Lessee to continue to meet its obligations set forth in this section.

D. Subsequent to the Initial Loading, if any Car remains on Lessee's railroad tracks for more than seven (7) consecutive days, excluding those days such Cars are undergoing servicing, repair or alteration as provided for in Section 5 unless the same was occasioned by the fault of Lessee; Itel Rail may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car remains on Lessee's railroad tracks more than seven (7) consecutive days because Lessee has not given preference to the Cars as specified in Section 3B, Lessee shall be liable for and remit to Itel Rail an amount equal to the Payments Lessee would have earned if such Cars were in the physical possession and use of another railroad for the entire period.

7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that Lessee retains on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefore to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Itel Rail in connection with the acquisition of Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is

continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the cars be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Itel Rail or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

8. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten days after the date any such payment is due.

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten days thereafter.

(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

B. Upon the occurrence of any event of default, Itel Rail may, at its option, terminate this Agreement for all or for such Cars as Itel Rail shall determine (which termination shall not release Lessee from any obligation to pay to Itel Rail any and all rent or other sums that may then be due or accrued to such date or from the obligation to perform any duty or discharge any other liability occurring prior thereto) and may

(i) Proceed by any lawful means to enforce performance by Lessee of such obligations or to recover damages for a breach thereof (and Lessee agrees to bear Itel Rail's costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Itel Rail may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee.

9. Termination

Upon the termination of this Agreement as to any Cars, Lessee will surrender possession of such Cars to Itel Rail by delivering the same to Itel Rail. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Car and the placing thereon of such markings as may be designated by Itel Rail, either, at the option of Itel Rail, (1) by Lessee upon return of such Cars to Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Cars are not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing, and transporting such Cars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by Itel Rail. If such Cars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five working days remove Lessee's railroad markings from the Cars and place thereon such markings as may be designated by Itel Rail. After the removal and replacement of markings, Lessee shall use its best efforts to load such Cars with freight and deliver such Cars to a connecting carrier for shipment. Lessee shall provide up to sixty (60) days free storage on its railroad tracks for Itel Rail or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to subsection 6C or 6E or section 8 prior to the end of its lease term, Lessee shall be liable to Itel Rail for all costs and expenses incurred by Itel Rail to repaint the Cars and place thereon the markings and name or other insignia of Itel Rail's subsequent lessee.

10. Indemnities

Itel Rail will defend, indemnify and hold Lessee harmless from and against (1) any and all loss or damage of or to the Cars, usual wear and tear excepted, unless occurring while Lessee has physical possession of Cars and (2) any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars (other than loss or physical damage to the Cars as provided in (1) above) unless occurring through the fault of Lessee, including without limitation the construction, purchase and delivery of the Cars to Lessee's railroad line, ownership, leasing or return of the Cars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by Itel Rail or Lessee).

11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to Itel Rail in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

12. Inspection

Itel Rail shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify Itel Rail of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify Itel Rail in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to Itel Rail promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of Itel Rail assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Agreement and in furtherance of any financing agreement entered into by Itel Rail in connection with the acquisition of the Cars in order to confirm the financing party's interest in

and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a Lessee only.

D. No failure or delay by either party herein shall constitute a waiver or otherwise affect or impair any right, power or remedy available, except as otherwise provided herein; nor shall any waiver or indulgence by either party or any partial or single exercise of a right, power or further exercise of any other right, power or remedy, except as otherwise provided for herein.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ITEL CORPORATION
RAIL INTERMODAL DIVISION

XXXXXX

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ITEL

CORPORATION

Rail Lease Division

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this day of, 19, between ITEL CORPORATION, RAIL LEASE DIVISION, a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111 ("IteI Rail"), as Lessor, and a corporation ("Lessee"), as Lessee.

1. Scope of Agreement

A. IteI Rail agrees to lease to Lessee, and Lessee agrees to lease from IteI Rail, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that IteI Rail shall at all times be and remain the lessor of all Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The term of lease with respect to all of the Cars described on each Schedule shall be for fifteen (15) years (the "Initial Lease Term") commencing upon the date when all Cars on such Schedule have been delivered as set forth in Section 3A hereof.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each (the "Extended Lease Term") with respect to all of the Cars described on each Schedule, provided, however, that IteI Rail or Lessee may terminate this Agreement on or after the Initial Lease Term as to all, but not fewer than all, of the Cars on any such Schedule by written notice delivered to the other not less than twelve months prior to the end of the Initial Lease Term or any Extended Lease Term.

3. Supply Provisions

A. IteI Rail will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to IteI Rail that the sample Car which will be made available for the Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and IteI Rail's determination that the Car conforms to the specifications ordered by IteI Rail and to all applicable governmental regulatory specifications, and provided this Agreement has not been terminated, IteI Rail will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed delivered to Lessee upon acceptance by IteI Rail. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by IteI Rail as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, IteI Rail can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay to IteI Rail the rent set forth in this Agreement. To move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee (the "Initial Loading"), IteI Rail agrees to assist Lessee in monitoring Car movements and, when

deemed necessary by Lessee and Itel Rail, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

B. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease freight cars from any other party until it shall have received all of the Cars on the Schedule or Schedules. Once Cars have been delivered to Lessee, it shall then not lease freight cars similar to the type leased hereunder from any other party until it shall have given Itel Rail at least three (3) months' prior written notice of its desire to lease such freight cars and Itel Rail shall then have the opportunity to procure and lease such freight cars to Lessee subject to the terms and conditions of this Agreement, manufacturers' delivery schedules and at terms not less favorable to Lessee than those offered by such other parties. The foregoing, however, shall not be deemed to prohibit Lessee from leasing from other parties if Itel Rail does not offer lease terms equal to or better than those offered by such other parties. Lessee shall give preference to Itel Rail and shall load the Cars leased from Itel Rail prior to loading substantially similar freight cars leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

C. Additional Cars shall be leased from Itel Rail by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by Itel Rail and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to manufacturers' delivery schedules, financing satisfactory to Itel Rail and the mutual acknowledgment of the parties that the addition of such Cars is not likely to reduce Utilization (as defined in Section 6) of all Cars on lease to Lessee to less than 87.5 per cent in any calendar quarter. If, due to the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule shall be delivered to Lessee, the lease term shall be deemed to have commenced on the date the final Car of the most recent group of Cars was delivered to Lessee.

4. Railroad Markings and Record Keeping

A. Itel Rail and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. Such name and/or insignia shall comply with all applicable regulations.

B. At no cost to Lessee, Itel Rail shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents including an application for relief from AAR Car Service Rules 1 and 2; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Itel Rail shall, on behalf of Lessee, perform all record keeping functions related to the use of the Cars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as Itel Rail shall select.

D. All record keeping performed by Itel Rail hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Itel Rail in a form suitable for reasonable inspection by Lessee from time to time during regular Itel Rail business hours. Lessee shall supply Itel Rail with such reports, including daily telephone reports of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad line as Itel Rail may reasonably request.

5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, Itel Rail will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to Itel Rail for any repairs required for damage not noted at the time of interchange.

B. Except as provided above, Itel Rail shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of Itel Rail, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by Itel Rail. Itel Rail shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the lease term of such Cars. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without Itel Rail's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without Itel Rail's prior written consent, Lessee shall be liable to Itel Rail for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with Itel Rail.

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules—Freight for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by obtaining insurance. Lessee shall also maintain bodily injury and property damage liability insurance. Lessee shall furnish Itel Rail concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months with certificates of insurance with respect to the insurance required as aforesaid signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and Itel Rail (or its assignee) as their interests may appear.

D. Itel Rail agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues. Itel Rail shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. Itel Rail and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. Itel Rail shall review all applicable tax returns prior to filing.

6. Lease Rental

A. Lessee agrees to pay the following rent to Itel Rail for the use of the Cars:

(i) Itel Rail shall receive all payments made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "Payments") if the Utilization (as defined below) of all of the Cars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than 90 per cent. For the purpose of this Agreement, Utilization of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that car hire payments are earned by Lessee on the Cars, commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Cars are on lease to Lessee, commencing from the Initial Loading. In addition, Itel Rail will receive, as additional rental, all monies earned by the Cars prior to their Initial Loading.

(ii) In the event Utilization exceeds 90 per cent in any calendar year, Itel Rail shall receive an amount equal to the Itel Rail Base Rental plus an amount equal to one-half of the Payments earned in excess of the Itel Rail Base Rental. For the purpose hereof, Itel Rail Base Rental shall be an amount equal to the total Payments for the calendar year multiplied by a fraction, the numerator of which is 90 per cent and the denominator of which is the Utilization for such calendar year. (The above determination of Itel Rail Base Rental insures that Lessee will, if Utilization is greater than 90 per cent in any calendar year, receive one-half of all the Payments made by other railroads for use or handling of the Cars in excess of the Itel Rail Base Rental.)

(iii) If Itel Rail pays other railroads to move Cars in accordance with Section 3A, except for any expenses incurred to deliver such Cars to Lessee's railroad line, Lessee shall reimburse Itel Rail for such expenses only from and out of the monies received by Lessee pursuant to subsection 6A(ii).

(iv) The rental charges payable to Itel Rail by Lessee shall be paid from the Payments received by Lessee in the following order until Itel Rail receives the amounts due it pursuant to this section: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges; (4) excess demurrage; and (5) other.

(v) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules—Freight and the appropriate amount due as a result thereof is received by Itel Rail, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

B. The calculations required above shall be made within five months after the end of each calendar year. However, to enable Itel Rail to meet its financial commitments, Itel Rail shall, prior to making such calculations, retain the payments received by it on behalf of the Lessee. Further, since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due Itel Rail, Itel Rail shall within three months after the end of each calendar quarter, calculate on a quarterly basis rather than a yearly basis the amount due it pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

C. If at any time during a calendar quarter, the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the Utilization in such calendar quarter cannot be equal to or greater than 87.5 per cent, Itel Rail may, at its option and upon not less than 10 days prior written notice to Lessee, terminate this Agreement as to such Cars as Itel Rail shall determine.

D. Itel Rail may, at its option, terminate this Agreement if the ICC shall, at any time, (1) issue an order reducing incentive car hire for Cars on an annual basis to three months or less without a corresponding increase in straight car hire or other monies available to both Itel Rail and Lessee at least equal in amount to such reduction, (2) determine that Lessee may not apply its incentive car hire receipts in payment of the rental charges set forth in this section or (3) require that Lessee spend funds not earned by the Cars in order for Lessee to continue to meet its obligations set forth in this section.

E. Subsequent to the Initial Loading, if any Car remains on Lessee's railroad tracks for more than seven consecutive days, Itel Rail may, at its option and upon not less than 24 hours prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car remains on Lessee's railroad tracks more than seven consecutive days because Lessee has not given preference to the Cars as specified in Section 3B, Lessee shall be liable for and remit to Itel Rail an amount equal to the Payments Lessee would have earned if such Cars were in the physical possession and use of another railroad for the entire period.

7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that Lessee retain on its

railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Itel Rail in connection with the acquisition of Cars, *i.e.*, upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the Cars be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Itel Rail or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

8. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten days after the date any such payment is due.

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten days thereafter.

(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

B. Upon the occurrence of any event of default, Itel Rail may, at its option, terminate this Agreement (which termination shall not release Lessee from any obligation to pay to Itel Rail any and all rent or other sums that may then be due or accrued to such date or from the obligation to perform any duty or discharge any other liability occurring prior thereto) and may

(i) Proceed by any lawful means to enforce performance by Lessee of such obligations or to recover damages for a breach thereof (and Lessee agrees to bear Itel Rail's costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Itel Rail may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee.

9. Termination

Upon the termination of this Agreement as to any Cars, Lessee will surrender possession of such Cars to Itel Rail by delivering the same to Itel Rail. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Car and the placing thereon of such markings as may be designated by Itel Rail, either, at the option of Itel Rail, (1) by Lessee upon return of such Cars to Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Cars are not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing, and transporting such Cars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by Itel Rail. If such Cars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five working days remove Lessee's railroad markings from the Cars and place thereon such markings as may be designated by Itel Rail. After the removal and replacement of markings, Lessee shall use its best efforts to load such Cars with freight and deliver such Cars to a connecting carrier for shipment. Lessee shall provide up to sixty (60) days free storage on its railroad tracks for Itel Rail or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to subsections 6C or 6E or Section 8 prior to the end of its lease term, Lessee shall be liable to Itel Rail for all costs and expenses incurred by Itel Rail to repaint the Cars and place thereon the markings and name or other insignia of Itel Rail's subsequent lessee.

10. Indemnities

Itel Rail will defend, indemnify and hold Lessee harmless from and against (1) any and all loss or damage of or to the Cars, usual wear and tear excepted, unless occurring while Lessee has physical possession of Cars and (2) any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars (other than loss or physical damage to the Cars as provided in (1) above) unless occurring through the fault of Lessee, including without limitation the construction, purchase and delivery of the Cars to Lessee's railroad line, ownership, leasing or return of the Cars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by Itel Rail or Lessee).

11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to Itel Rail in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

(v) Lessee has not during the years 1964-1968 built, leased, purchased or nonequity leased new boxcars or rebuilt any boxcars.

12. Inspection

Itel Rail shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify Itel Rail of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify Itel Rail in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to Itel Rail promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of Itel Rail assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Agreement and in furtherance of any financing agreement entered into by Itel Rail in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

D. No failure or delay by Itel Rail shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Itel Rail nor shall any waiver or indulgence by Itel Rail or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ITEL CORPORATION, RAIL LEASE DIVISION

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____